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HOUSE BILL 2715

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By Representatives Barlow, Hurst, Lantz, Upthegrove, Conway, Morrell, Miloscia, Kenney, Williams, Loomis, Haigh, Simpson, VanDeWege, and Kelley

Read first time 01/16/08. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to enhancing the penalty for sex offenses committed  
2 in a school protection zone; amending RCW 9.94A.533; reenacting and  
3 amending RCW 9.94A.030; adding a new section to chapter 9.94A RCW; and  
4 prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW  
7 to read as follows:

8 (1) In a prosecution for a sex offense, the prosecuting attorney  
9 may file a special allegation that the offense was committed in a  
10 school protection zone whenever sufficient admissible evidence exists,  
11 which, when considered with the most plausible, reasonably foreseeable  
12 defense that could be raised under the evidence, would justify a  
13 finding by a reasonable fact-finder that the offense was committed in  
14 a school protection zone.

15 (2) Once a special allegation has been made under this section, the  
16 state has the burden to prove beyond a reasonable doubt that the  
17 offense was committed in a school protection zone. If a jury is had,  
18 the jury shall, if it finds the defendant guilty, also find a special

1 verdict as to whether the offense was committed in a school protection  
2 zone. If no jury is had, the court shall make a finding of fact as to  
3 whether the offense was committed in a school protection zone.

4 (3) The prosecuting attorney may not withdraw a special allegation  
5 under this section without approval of the court through an order of  
6 dismissal of the special allegation. The court may not dismiss the  
7 special allegation unless it finds that the order is necessary to  
8 correct an error in the original charging decision or unless there are  
9 evidentiary problems that make proving the special allegation doubtful.

10 (4) If there has been a special verdict or finding that a sex  
11 offense was committed in a school protection zone under this section:

12 (a) The court may impose a fine up to twice the fine authorized by  
13 law; and

14 (b) The statutory maximum sentence for the offense shall be twice  
15 the statutory maximum sentence designated in RCW 9A.20.021.

16 **Sec. 2.** RCW 9.94A.533 and 2007 c 368 s 9 are each amended to read  
17 as follows:

18 (1) The provisions of this section apply to the standard sentence  
19 ranges determined by RCW 9.94A.510 or 9.94A.517.

20 (2) For persons convicted of the anticipatory offenses of criminal  
21 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
22 standard sentence range is determined by locating the sentencing grid  
23 sentence range defined by the appropriate offender score and the  
24 seriousness level of the completed crime, and multiplying the range by  
25 seventy-five percent.

26 (3) The following additional times shall be added to the standard  
27 sentence range for felony crimes committed after July 23, 1995, if the  
28 offender or an accomplice was armed with a firearm as defined in RCW  
29 9.41.010 and the offender is being sentenced for one of the crimes  
30 listed in this subsection as eligible for any firearm enhancements  
31 based on the classification of the completed felony crime. If the  
32 offender is being sentenced for more than one offense, the firearm  
33 enhancement or enhancements must be added to the total period of  
34 confinement for all offenses, regardless of which underlying offense is  
35 subject to a firearm enhancement. If the offender or an accomplice was  
36 armed with a firearm as defined in RCW 9.41.010 and the offender is  
37 being sentenced for an anticipatory offense under chapter 9A.28 RCW to

1 commit one of the crimes listed in this subsection as eligible for any  
2 firearm enhancements, the following additional times shall be added to  
3 the standard sentence range determined under subsection (2) of this  
4 section based on the felony crime of conviction as classified under RCW  
5 9A.28.020:

6 (a) Five years for any felony defined under any law as a class A  
7 felony or with a statutory maximum sentence of at least twenty years,  
8 or both, and not covered under (f) of this subsection;

9 (b) Three years for any felony defined under any law as a class B  
10 felony or with a statutory maximum sentence of ten years, or both, and  
11 not covered under (f) of this subsection;

12 (c) Eighteen months for any felony defined under any law as a class  
13 C felony or with a statutory maximum sentence of five years, or both,  
14 and not covered under (f) of this subsection;

15 (d) If the offender is being sentenced for any firearm enhancements  
16 under (a), (b), and/or (c) of this subsection and the offender has  
17 previously been sentenced for any deadly weapon enhancements after July  
18 23, 1995, under (a), (b), and/or (c) of this subsection or subsection  
19 (4)(a), (b), and/or (c) of this section, or both, all firearm  
20 enhancements under this subsection shall be twice the amount of the  
21 enhancement listed;

22 (e) Notwithstanding any other provision of law, all firearm  
23 enhancements under this section are mandatory, shall be served in total  
24 confinement, and shall run consecutively to all other sentencing  
25 provisions, including other firearm or deadly weapon enhancements, for  
26 all offenses sentenced under this chapter. However, whether or not a  
27 mandatory minimum term has expired, an offender serving a sentence  
28 under this subsection may be granted an extraordinary medical placement  
29 when authorized under RCW 9.94A.728(4);

30 (f) The firearm enhancements in this section shall apply to all  
31 felony crimes except the following: Possession of a machine gun,  
32 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
33 unlawful possession of a firearm in the first and second degree, and  
34 use of a machine gun in a felony;

35 (g) If the standard sentence range under this section exceeds the  
36 statutory maximum sentence for the offense, the statutory maximum  
37 sentence shall be the presumptive sentence unless the offender is a  
38 persistent offender. If the addition of a firearm enhancement

1 increases the sentence so that it would exceed the statutory maximum  
2 for the offense, the portion of the sentence representing the  
3 enhancement may not be reduced.

4 (4) The following additional times shall be added to the standard  
5 sentence range for felony crimes committed after July 23, 1995, if the  
6 offender or an accomplice was armed with a deadly weapon other than a  
7 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
8 for one of the crimes listed in this subsection as eligible for any  
9 deadly weapon enhancements based on the classification of the completed  
10 felony crime. If the offender is being sentenced for more than one  
11 offense, the deadly weapon enhancement or enhancements must be added to  
12 the total period of confinement for all offenses, regardless of which  
13 underlying offense is subject to a deadly weapon enhancement. If the  
14 offender or an accomplice was armed with a deadly weapon other than a  
15 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
16 for an anticipatory offense under chapter 9A.28 RCW to commit one of  
17 the crimes listed in this subsection as eligible for any deadly weapon  
18 enhancements, the following additional times shall be added to the  
19 standard sentence range determined under subsection (2) of this section  
20 based on the felony crime of conviction as classified under RCW  
21 9A.28.020:

22 (a) Two years for any felony defined under any law as a class A  
23 felony or with a statutory maximum sentence of at least twenty years,  
24 or both, and not covered under (f) of this subsection;

25 (b) One year for any felony defined under any law as a class B  
26 felony or with a statutory maximum sentence of ten years, or both, and  
27 not covered under (f) of this subsection;

28 (c) Six months for any felony defined under any law as a class C  
29 felony or with a statutory maximum sentence of five years, or both, and  
30 not covered under (f) of this subsection;

31 (d) If the offender is being sentenced under (a), (b), and/or (c)  
32 of this subsection for any deadly weapon enhancements and the offender  
33 has previously been sentenced for any deadly weapon enhancements after  
34 July 23, 1995, under (a), (b), and/or (c) of this subsection or  
35 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly  
36 weapon enhancements under this subsection shall be twice the amount of  
37 the enhancement listed;

1 (e) Notwithstanding any other provision of law, all deadly weapon  
2 enhancements under this section are mandatory, shall be served in total  
3 confinement, and shall run consecutively to all other sentencing  
4 provisions, including other firearm or deadly weapon enhancements, for  
5 all offenses sentenced under this chapter. However, whether or not a  
6 mandatory minimum term has expired, an offender serving a sentence  
7 under this subsection may be granted an extraordinary medical placement  
8 when authorized under RCW 9.94A.728(4);

9 (f) The deadly weapon enhancements in this section shall apply to  
10 all felony crimes except the following: Possession of a machine gun,  
11 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
12 unlawful possession of a firearm in the first and second degree, and  
13 use of a machine gun in a felony;

14 (g) If the standard sentence range under this section exceeds the  
15 statutory maximum sentence for the offense, the statutory maximum  
16 sentence shall be the presumptive sentence unless the offender is a  
17 persistent offender. If the addition of a deadly weapon enhancement  
18 increases the sentence so that it would exceed the statutory maximum  
19 for the offense, the portion of the sentence representing the  
20 enhancement may not be reduced.

21 (5) The following additional times shall be added to the standard  
22 sentence range if the offender or an accomplice committed the offense  
23 while in a county jail or state correctional facility and the offender  
24 is being sentenced for one of the crimes listed in this subsection. If  
25 the offender or an accomplice committed one of the crimes listed in  
26 this subsection while in a county jail or state correctional facility,  
27 and the offender is being sentenced for an anticipatory offense under  
28 chapter 9A.28 RCW to commit one of the crimes listed in this  
29 subsection, the following additional times shall be added to the  
30 standard sentence range determined under subsection (2) of this  
31 section:

32 (a) Eighteen months for offenses committed under RCW 69.50.401(2)  
33 (a) or (b) or 69.50.410;

34 (b) Fifteen months for offenses committed under RCW 69.50.401(2)  
35 (c), (d), or (e);

36 (c) Twelve months for offenses committed under RCW 69.50.4013.

37 For the purposes of this subsection, all of the real property of a

1 state correctional facility or county jail shall be deemed to be part  
2 of that facility or county jail.

3 (6) An additional twenty-four months shall be added to the standard  
4 sentence range for any ranked offense involving a violation of chapter  
5 69.50 RCW if the offense was also a violation of RCW 69.50.435 or  
6 9.94A.605. All enhancements under this subsection shall run  
7 consecutively to all other sentencing provisions, for all offenses  
8 sentenced under this chapter.

9 (7) An additional two years shall be added to the standard sentence  
10 range for vehicular homicide committed while under the influence of  
11 intoxicating liquor or any drug as defined by RCW 46.61.502 for each  
12 prior offense as defined in RCW 46.61.5055.

13 (8)(a) The following additional times shall be added to the  
14 standard sentence range for felony crimes committed on or after July 1,  
15 2006, if the offense was committed with sexual motivation, as that term  
16 is defined in RCW 9.94A.030. If the offender is being sentenced for  
17 more than one offense, the sexual motivation enhancement must be added  
18 to the total period of total confinement for all offenses, regardless  
19 of which underlying offense is subject to a sexual motivation  
20 enhancement. If the offender committed the offense with sexual  
21 motivation and the offender is being sentenced for an anticipatory  
22 offense under chapter 9A.28 RCW, the following additional times shall  
23 be added to the standard sentence range determined under subsection (2)  
24 of this section based on the felony crime of conviction as classified  
25 under RCW 9A.28.020:

26 (i) Two years for any felony defined under the law as a class A  
27 felony or with a statutory maximum sentence of at least twenty years,  
28 or both;

29 (ii) Eighteen months for any felony defined under any law as a  
30 class B felony or with a statutory maximum sentence of ten years, or  
31 both;

32 (iii) One year for any felony defined under any law as a class C  
33 felony or with a statutory maximum sentence of five years, or both;

34 (iv) If the offender is being sentenced for any sexual motivation  
35 enhancements under (i), (ii), and/or (iii) of this subsection and the  
36 offender has previously been sentenced for any sexual motivation  
37 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of

1 this subsection, all sexual motivation enhancements under this  
2 subsection shall be twice the amount of the enhancement listed;

3 (b) Notwithstanding any other provision of law, all sexual  
4 motivation enhancements under this subsection are mandatory, shall be  
5 served in total confinement, and shall run consecutively to all other  
6 sentencing provisions, including other sexual motivation enhancements,  
7 for all offenses sentenced under this chapter. However, whether or not  
8 a mandatory minimum term has expired, an offender serving a sentence  
9 under this subsection may be granted an extraordinary medical placement  
10 when authorized under RCW 9.94A.728(4);

11 (c) The sexual motivation enhancements in this subsection apply to  
12 all felony crimes;

13 (d) If the standard sentence range under this subsection exceeds  
14 the statutory maximum sentence for the offense, the statutory maximum  
15 sentence shall be the presumptive sentence unless the offender is a  
16 persistent offender. If the addition of a sexual motivation  
17 enhancement increases the sentence so that it would exceed the  
18 statutory maximum for the offense, the portion of the sentence  
19 representing the enhancement may not be reduced;

20 (e) The portion of the total confinement sentence which the  
21 offender must serve under this subsection shall be calculated before  
22 any earned early release time is credited to the offender;

23 (f) Nothing in this subsection prevents a sentencing court from  
24 imposing a sentence outside the standard sentence range pursuant to RCW  
25 9.94A.535.

26 (9) An additional one-year enhancement shall be added to the  
27 standard sentence range for the felony crimes of RCW 9A.44.073,  
28 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
29 or after July 22, 2007, if the offender engaged, agreed, or offered to  
30 engage the victim in the sexual conduct in return for a fee. If the  
31 offender is being sentenced for more than one offense, the one-year  
32 enhancement must be added to the total period of total confinement for  
33 all offenses, regardless of which underlying offense is subject to the  
34 enhancement. If the offender is being sentenced for an anticipatory  
35 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,  
36 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,  
37 solicited another, or conspired to engage, agree, or offer to engage  
38 the victim in (~~the~~) the sexual conduct in return for a fee, an

1 additional one-year enhancement shall be added to the standard sentence  
2 range determined under subsection (2) of this section. For purposes of  
3 this subsection, "sexual conduct" means sexual intercourse or sexual  
4 contact, both as defined in chapter 9A.44 RCW.

5 (10) An additional twenty-four months shall be added to the  
6 standard range for any sex offense with a special verdict or finding  
7 that the offense was committed in a school protection zone under  
8 section 1 of this act. An enhancement imposed under this subsection is  
9 mandatory, shall be served in total confinement, and shall run  
10 consecutively to all other sentencing provisions, including any other  
11 enhancements imposed under this section. If the standard sentence  
12 range under this subsection exceeds the statutory maximum sentence for  
13 the offense: (a) The statutory maximum sentence shall be the  
14 presumptive sentence unless the offender is a persistent offender; and  
15 (b) the portion of the sentence representing the enhancement may not be  
16 reduced.

17 **Sec. 3.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c  
18 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and  
19 amended to read as follows:

20 Unless the context clearly requires otherwise, the definitions in  
21 this section apply throughout this chapter.

22 (1) "Board" means the indeterminate sentence review board created  
23 under chapter 9.95 RCW.

24 (2) "Collect," or any derivative thereof, "collect and remit," or  
25 "collect and deliver," when used with reference to the department,  
26 means that the department, either directly or through a collection  
27 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
28 and enforcing the offender's sentence with regard to the legal  
29 financial obligation, receiving payment thereof from the offender, and,  
30 consistent with current law, delivering daily the entire payment to the  
31 superior court clerk without depositing it in a departmental account.

32 (3) "Commission" means the sentencing guidelines commission.

33 (4) "Community corrections officer" means an employee of the  
34 department who is responsible for carrying out specific duties in  
35 supervision of sentenced offenders and monitoring of sentence  
36 conditions.

1 (5) "Community custody" means that portion of an offender's  
2 sentence of confinement in lieu of earned release time or imposed  
3 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
4 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
5 community subject to controls placed on the offender's movement and  
6 activities by the department. For offenders placed on community  
7 custody for crimes committed on or after July 1, 2000, the department  
8 shall assess the offender's risk of reoffense and may establish and  
9 modify conditions of community custody, in addition to those imposed by  
10 the court, based upon the risk to community safety.

11 (6) "Community custody range" means the minimum and maximum period  
12 of community custody included as part of a sentence under RCW  
13 9.94A.715, as established by the commission or the legislature under  
14 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

15 (7) "Community placement" means that period during which the  
16 offender is subject to the conditions of community custody and/or  
17 postrelease supervision, which begins either upon completion of the  
18 term of confinement (postrelease supervision) or at such time as the  
19 offender is transferred to community custody in lieu of earned release.  
20 Community placement may consist of entirely community custody, entirely  
21 postrelease supervision, or a combination of the two.

22 (8) "Community protection zone" means the area within eight hundred  
23 eighty feet of the facilities and grounds of a public or private  
24 school.

25 (9) "Community restitution" means compulsory service, without  
26 compensation, performed for the benefit of the community by the  
27 offender.

28 (10) "Community supervision" means a period of time during which a  
29 convicted offender is subject to crime-related prohibitions and other  
30 sentence conditions imposed by a court pursuant to this chapter or RCW  
31 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
32 a chemical dependency that has contributed to his or her offense, the  
33 conditions of supervision may, subject to available resources, include  
34 treatment. For purposes of the interstate compact for out-of-state  
35 supervision of parolees and probationers, RCW 9.95.270, community  
36 supervision is the functional equivalent of probation and should be  
37 considered the same as probation by other states.

38 (11) "Confinement" means total or partial confinement.

1 (12) "Conviction" means an adjudication of guilt pursuant to Titles  
2 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
3 acceptance of a plea of guilty.

4 (13) "Crime-related prohibition" means an order of a court  
5 prohibiting conduct that directly relates to the circumstances of the  
6 crime for which the offender has been convicted, and shall not be  
7 construed to mean orders directing an offender affirmatively to  
8 participate in rehabilitative programs or to otherwise perform  
9 affirmative conduct. However, affirmative acts necessary to monitor  
10 compliance with the order of a court may be required by the department.

11 (14) "Criminal history" means the list of a defendant's prior  
12 convictions and juvenile adjudications, whether in this state, in  
13 federal court, or elsewhere.

14 (a) The history shall include, where known, for each conviction (i)  
15 whether the defendant has been placed on probation and the length and  
16 terms thereof; and (ii) whether the defendant has been incarcerated and  
17 the length of incarceration.

18 (b) A conviction may be removed from a defendant's criminal history  
19 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
20 a similar out-of-state statute, or if the conviction has been vacated  
21 pursuant to a governor's pardon.

22 (c) The determination of a defendant's criminal history is distinct  
23 from the determination of an offender score. A prior conviction that  
24 was not included in an offender score calculated pursuant to a former  
25 version of the sentencing reform act remains part of the defendant's  
26 criminal history.

27 (15) "Day fine" means a fine imposed by the sentencing court that  
28 equals the difference between the offender's net daily income and the  
29 reasonable obligations that the offender has for the support of the  
30 offender and any dependents.

31 (16) "Day reporting" means a program of enhanced supervision  
32 designed to monitor the offender's daily activities and compliance with  
33 sentence conditions, and in which the offender is required to report  
34 daily to a specific location designated by the department or the  
35 sentencing court.

36 (17) "Department" means the department of corrections.

37 (18) "Determinate sentence" means a sentence that states with  
38 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community supervision, the  
2 number of actual hours or days of community restitution work, or  
3 dollars or terms of a legal financial obligation. The fact that an  
4 offender through earned release can reduce the actual period of  
5 confinement shall not affect the classification of the sentence as a  
6 determinate sentence.

7 (19) "Disposable earnings" means that part of the earnings of an  
8 offender remaining after the deduction from those earnings of any  
9 amount required by law to be withheld. For the purposes of this  
10 definition, "earnings" means compensation paid or payable for personal  
11 services, whether denominated as wages, salary, commission, bonuses, or  
12 otherwise, and, notwithstanding any other provision of law making the  
13 payments exempt from garnishment, attachment, or other process to  
14 satisfy a court-ordered legal financial obligation, specifically  
15 includes periodic payments pursuant to pension or retirement programs,  
16 or insurance policies of any type, but does not include payments made  
17 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
18 or Title 74 RCW.

19 (20) "Drug offender sentencing alternative" is a sentencing option  
20 available to persons convicted of a felony offense other than a violent  
21 offense or a sex offense and who are eligible for the option under RCW  
22 9.94A.660.

23 (21) "Drug offense" means:

24 (a) Any felony violation of chapter 69.50 RCW except possession of  
25 a controlled substance (RCW 69.50.4013) or forged prescription for a  
26 controlled substance (RCW 69.50.403);

27 (b) Any offense defined as a felony under federal law that relates  
28 to the possession, manufacture, distribution, or transportation of a  
29 controlled substance; or

30 (c) Any out-of-state conviction for an offense that under the laws  
31 of this state would be a felony classified as a drug offense under (a)  
32 of this subsection.

33 (22) "Earned release" means earned release from confinement as  
34 provided in RCW 9.94A.728.

35 (23) "Escape" means:

36 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
37 first degree (RCW 9A.76.110), escape in the second degree (RCW  
38 9A.76.120), willful failure to return from furlough (RCW 72.66.060),

1 willful failure to return from work release (RCW 72.65.070), or willful  
2 failure to be available for supervision by the department while in  
3 community custody (RCW 72.09.310); or

4 (b) Any federal or out-of-state conviction for an offense that  
5 under the laws of this state would be a felony classified as an escape  
6 under (a) of this subsection.

7 (24) "Felony traffic offense" means:

8 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
9 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
10 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
11 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
12 felony physical control of a vehicle while under the influence of  
13 intoxicating liquor or any drug (RCW 46.61.504(6)); or

14 (b) Any federal or out-of-state conviction for an offense that  
15 under the laws of this state would be a felony classified as a felony  
16 traffic offense under (a) of this subsection.

17 (25) "Fine" means a specific sum of money ordered by the sentencing  
18 court to be paid by the offender to the court over a specific period of  
19 time.

20 (26) "First-time offender" means any person who has no prior  
21 convictions for a felony and is eligible for the first-time offender  
22 waiver under RCW 9.94A.650.

23 (27) "Home detention" means a program of partial confinement  
24 available to offenders wherein the offender is confined in a private  
25 residence subject to electronic surveillance.

26 (28) "Legal financial obligation" means a sum of money that is  
27 ordered by a superior court of the state of Washington for legal  
28 financial obligations which may include restitution to the victim,  
29 statutorily imposed crime victims' compensation fees as assessed  
30 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
31 court-appointed attorneys' fees, and costs of defense, fines, and any  
32 other financial obligation that is assessed to the offender as a result  
33 of a felony conviction. Upon conviction for vehicular assault while  
34 under the influence of intoxicating liquor or any drug, RCW  
35 46.61.522(1)(b), or vehicular homicide while under the influence of  
36 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
37 obligations may also include payment to a public agency of the expense

1 of an emergency response to the incident resulting in the conviction,  
2 subject to RCW 38.52.430.

3 (29) "Most serious offense" means any of the following felonies or  
4 a felony attempt to commit any of the following felonies:

5 (a) Any felony defined under any law as a class A felony or  
6 criminal solicitation of or criminal conspiracy to commit a class A  
7 felony;

8 (b) Assault in the second degree;

9 (c) Assault of a child in the second degree;

10 (d) Child molestation in the second degree;

11 (e) Controlled substance homicide;

12 (f) Extortion in the first degree;

13 (g) Incest when committed against a child under age fourteen;

14 (h) Indecent liberties;

15 (i) Kidnapping in the second degree;

16 (j) Leading organized crime;

17 (k) Manslaughter in the first degree;

18 (l) Manslaughter in the second degree;

19 (m) Promoting prostitution in the first degree;

20 (n) Rape in the third degree;

21 (o) Robbery in the second degree;

22 (p) Sexual exploitation;

23 (q) Vehicular assault, when caused by the operation or driving of  
24 a vehicle by a person while under the influence of intoxicating liquor  
25 or any drug or by the operation or driving of a vehicle in a reckless  
26 manner;

27 (r) Vehicular homicide, when proximately caused by the driving of  
28 any vehicle by any person while under the influence of intoxicating  
29 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
30 any vehicle in a reckless manner;

31 (s) Any other class B felony offense with a finding of sexual  
32 motivation;

33 (t) Any other felony with a deadly weapon verdict under RCW  
34 9.94A.602;

35 (u) Any felony offense in effect at any time prior to December 2,  
36 1993, that is comparable to a most serious offense under this  
37 subsection, or any federal or out-of-state conviction for an offense

1 that under the laws of this state would be a felony classified as a  
2 most serious offense under this subsection;

3 (v)(i) A prior conviction for indecent liberties under RCW  
4 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
5 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
6 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
7 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

8 (ii) A prior conviction for indecent liberties under RCW  
9 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
10 if: (A) The crime was committed against a child under the age of  
11 fourteen; or (B) the relationship between the victim and perpetrator is  
12 included in the definition of indecent liberties under RCW  
13 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
14 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
15 through July 27, 1997.

16 (30) "Nonviolent offense" means an offense which is not a violent  
17 offense.

18 (31) "Offender" means a person who has committed a felony  
19 established by state law and is eighteen years of age or older or is  
20 less than eighteen years of age but whose case is under superior court  
21 jurisdiction under RCW 13.04.030 or has been transferred by the  
22 appropriate juvenile court to a criminal court pursuant to RCW  
23 13.40.110. Throughout this chapter, the terms "offender" and  
24 "defendant" are used interchangeably.

25 (32) "Partial confinement" means confinement for no more than one  
26 year in a facility or institution operated or utilized under contract  
27 by the state or any other unit of government, or, if home detention or  
28 work crew has been ordered by the court, in an approved residence, for  
29 a substantial portion of each day with the balance of the day spent in  
30 the community. Partial confinement includes work release, home  
31 detention, work crew, and a combination of work crew and home  
32 detention.

33 (33) "Persistent offender" is an offender who:

34 (a)(i) Has been convicted in this state of any felony considered a  
35 most serious offense; and

36 (ii) Has, before the commission of the offense under (a) of this  
37 subsection, been convicted as an offender on at least two separate  
38 occasions, whether in this state or elsewhere, of felonies that under

1 the laws of this state would be considered most serious offenses and  
2 would be included in the offender score under RCW 9.94A.525; provided  
3 that of the two or more previous convictions, at least one conviction  
4 must have occurred before the commission of any of the other most  
5 serious offenses for which the offender was previously convicted; or

6 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
7 of a child in the first degree, child molestation in the first degree,  
8 rape in the second degree, rape of a child in the second degree, or  
9 indecent liberties by forcible compulsion; (B) any of the following  
10 offenses with a finding of sexual motivation: Murder in the first  
11 degree, murder in the second degree, homicide by abuse, kidnapping in  
12 the first degree, kidnapping in the second degree, assault in the first  
13 degree, assault in the second degree, assault of a child in the first  
14 degree, assault of a child in the second degree, or burglary in the  
15 first degree; or (C) an attempt to commit any crime listed in this  
16 subsection (33)(b)(i); and

17 (ii) Has, before the commission of the offense under (b)(i) of this  
18 subsection, been convicted as an offender on at least one occasion,  
19 whether in this state or elsewhere, of an offense listed in (b)(i) of  
20 this subsection or any federal or out-of-state offense or offense under  
21 prior Washington law that is comparable to the offenses listed in  
22 (b)(i) of this subsection. A conviction for rape of a child in the  
23 first degree constitutes a conviction under (b)(i) of this subsection  
24 only when the offender was sixteen years of age or older when the  
25 offender committed the offense. A conviction for rape of a child in  
26 the second degree constitutes a conviction under (b)(i) of this  
27 subsection only when the offender was eighteen years of age or older  
28 when the offender committed the offense.

29 (34) "Postrelease supervision" is that portion of an offender's  
30 community placement that is not community custody.

31 (35) "Predatory" means: (a) The perpetrator of the crime was a  
32 stranger to the victim, as defined in this section; (b) the perpetrator  
33 established or promoted a relationship with the victim prior to the  
34 offense and the victimization of the victim was a significant reason  
35 the perpetrator established or promoted the relationship; or (c) the  
36 perpetrator was: (i) A teacher, counselor, volunteer, or other person  
37 in authority in any public or private school and the victim was a  
38 student of the school under his or her authority or supervision. For

1 purposes of this subsection, "school" does not include home-based  
2 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,  
3 volunteer, or other person in authority in any recreational activity  
4 and the victim was a participant in the activity under his or her  
5 authority or supervision; or (iii) a pastor, elder, volunteer, or other  
6 person in authority in any church or religious organization, and the  
7 victim was a member or participant of the organization under his or her  
8 authority.

9 (36) "Private school" means a school regulated under chapter  
10 28A.195 or 28A.205 RCW.

11 (37) "Public school" has the same meaning as in RCW 28A.150.010.

12 (38) "Restitution" means a specific sum of money ordered by the  
13 sentencing court to be paid by the offender to the court over a  
14 specified period of time as payment of damages. The sum may include  
15 both public and private costs.

16 (39) "Risk assessment" means the application of an objective  
17 instrument supported by research and adopted by the department for the  
18 purpose of assessing an offender's risk of reoffense, taking into  
19 consideration the nature of the harm done by the offender, place and  
20 circumstances of the offender related to risk, the offender's  
21 relationship to any victim, and any information provided to the  
22 department by victims. The results of a risk assessment shall not be  
23 based on unconfirmed or unconfirmable allegations.

24 (40) "School protection zone" means the area inside a public or  
25 private school, inside a school bus as defined in RCW 69.50.435,  
26 within one thousand feet of a school bus route stop designated by a  
27 school district, or within one thousand feet of the grounds of a public  
28 or private school.

29 (41) "Serious traffic offense" means:

30 (a) Nonfelony driving while under the influence of intoxicating  
31 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
32 while under the influence of intoxicating liquor or any drug (RCW  
33 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
34 attended vehicle (RCW 46.52.020(5)); or

35 (b) Any federal, out-of-state, county, or municipal conviction for  
36 an offense that under the laws of this state would be classified as a  
37 serious traffic offense under (a) of this subsection.

1       (~~(41)~~) (42) "Serious violent offense" is a subcategory of violent  
2 offense and means:  
3       (a)(i) Murder in the first degree;  
4       (ii) Homicide by abuse;  
5       (iii) Murder in the second degree;  
6       (iv) Manslaughter in the first degree;  
7       (v) Assault in the first degree;  
8       (vi) Kidnapping in the first degree;  
9       (vii) Rape in the first degree;  
10       (viii) Assault of a child in the first degree; or  
11       (ix) An attempt, criminal solicitation, or criminal conspiracy to  
12 commit one of these felonies; or  
13       (b) Any federal or out-of-state conviction for an offense that  
14 under the laws of this state would be a felony classified as a serious  
15 violent offense under (a) of this subsection.  
16       (~~(42)~~) (43) "Sex offense" means:  
17       (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
18 RCW 9A.44.130(~~(11)~~)(12);  
19       (ii) A violation of RCW 9A.64.020;  
20       (iii) A felony that is a violation of chapter 9.68A RCW other than  
21 RCW 9.68A.080; or  
22       (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
23 criminal solicitation, or criminal conspiracy to commit such crimes;  
24       (b) Any conviction for a felony offense in effect at any time prior  
25 to July 1, 1976, that is comparable to a felony classified as a sex  
26 offense in (a) of this subsection;  
27       (c) A felony with a finding of sexual motivation under RCW  
28 9.94A.835 or 13.40.135; or  
29       (d) Any federal or out-of-state conviction for an offense that  
30 under the laws of this state would be a felony classified as a sex  
31 offense under (a) of this subsection.  
32       (~~(43)~~) (44) "Sexual motivation" means that one of the purposes  
33 for which the defendant committed the crime was for the purpose of his  
34 or her sexual gratification.  
35       (~~(44)~~) (45) "Standard sentence range" means the sentencing  
36 court's discretionary range in imposing a nonappealable sentence.  
37       (~~(45)~~) (46) "Statutory maximum sentence" means the maximum length

1 of time for which an offender may be confined as punishment for a crime  
2 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
3 the crime, or other statute defining the maximum penalty for a crime.

4 ~~((46))~~ (47) "Stranger" means that the victim did not know the  
5 offender twenty-four hours before the offense.

6 ~~((47))~~ (48) "Total confinement" means confinement inside the  
7 physical boundaries of a facility or institution operated or utilized  
8 under contract by the state or any other unit of government for twenty-  
9 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

10 ~~((48))~~ (49) "Transition training" means written and verbal  
11 instructions and assistance provided by the department to the offender  
12 during the two weeks prior to the offender's successful completion of  
13 the work ethic camp program. The transition training shall include  
14 instructions in the offender's requirements and obligations during the  
15 offender's period of community custody.

16 ~~((49))~~ (50) "Victim" means any person who has sustained  
17 emotional, psychological, physical, or financial injury to person or  
18 property as a direct result of the crime charged.

19 ~~((50))~~ (51) "Violent offense" means:

20 (a) Any of the following felonies:

21 (i) Any felony defined under any law as a class A felony or an  
22 attempt to commit a class A felony;

23 (ii) Criminal solicitation of or criminal conspiracy to commit a  
24 class A felony;

25 (iii) Manslaughter in the first degree;

26 (iv) Manslaughter in the second degree;

27 (v) Indecent liberties if committed by forcible compulsion;

28 (vi) Kidnapping in the second degree;

29 (vii) Arson in the second degree;

30 (viii) Assault in the second degree;

31 (ix) Assault of a child in the second degree;

32 (x) Extortion in the first degree;

33 (xi) Robbery in the second degree;

34 (xii) Drive-by shooting;

35 (xiii) Vehicular assault, when caused by the operation or driving  
36 of a vehicle by a person while under the influence of intoxicating  
37 liquor or any drug or by the operation or driving of a vehicle in a  
38 reckless manner; and

1           (xiv) Vehicular homicide, when proximately caused by the driving of  
2 any vehicle by any person while under the influence of intoxicating  
3 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
4 any vehicle in a reckless manner;

5           (b) Any conviction for a felony offense in effect at any time prior  
6 to July 1, 1976, that is comparable to a felony classified as a violent  
7 offense in (a) of this subsection; and

8           (c) Any federal or out-of-state conviction for an offense that  
9 under the laws of this state would be a felony classified as a violent  
10 offense under (a) or (b) of this subsection.

11           (~~(+51+)~~) (52) "Work crew" means a program of partial confinement  
12 consisting of civic improvement tasks for the benefit of the community  
13 that complies with RCW 9.94A.725.

14           (~~(+52+)~~) (53) "Work ethic camp" means an alternative incarceration  
15 program as provided in RCW 9.94A.690 designed to reduce recidivism and  
16 lower the cost of corrections by requiring offenders to complete a  
17 comprehensive array of real-world job and vocational experiences,  
18 character-building work ethics training, life management skills  
19 development, substance abuse rehabilitation, counseling, literacy  
20 training, and basic adult education.

21           (~~(+53+)~~) (54) "Work release" means a program of partial confinement  
22 available to offenders who are employed or engaged as a student in a  
23 regular course of study at school.

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